

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Kasper et al.
Serial No.: 09/990,860
Filing Date: November 9, 2001
Confirmation No. 2711
Group Art Unit: 2137
Examiner: Ali S. Abyaneh
Title: *Method and System for Configurable
Network Intrusion Detection*

Mail Stop - AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. The Applicants respectfully request reconsideration of the rejections of the identified Claims in light of the remarks set forth below.

REMARKS

Applicants seek review of the rejections of Claims 2, 5, 13, and 19-27. Applicants do not seek review in this Request of the rejection of Claims 1, 3, 4, 6-12, 14-18, and 28-37, and 39. In a Final Office Action mailed September 8, 2006, Claims 2, 5, and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,279,113 issued to Vimal Vaidya ("*Vaidya*") in view of U.S. Patent No. Re 36,417 issued to Alan S. Perelson et al. ("*Perelson*"). Applicants request a finding that these rejections are improper and allowance of these claims.

With respect to Claim 2, the Final Office Action contends that the combination of *Vaidya* and *Perelson* discloses "generating, for each of the modified signature definitions, a revised inspector instance based on the modified signature definition and the corresponding generated inspector instance." Applicants contend that the combination of *Vaidya* and *Perelson* does not disclose this limitation for the reasons described in Applicants' Response dated November 8, 2006 at pages 10-11. In short, Applicants contend that *Perelson* fails to teach this limitation because the Final Office Action merely points to the equations at column 6, lines 6-24 of *Perelson* as disclosing this limitation. See Final Office Action, page 11. However, *Perelson* clearly discloses that these formulas merely determine the "probability of a match" between the test string and the original string. See *Perelson*, column 5, lines 37-38 (emphasis added). As a result, the formulas merely allow for a "predict[ion of] the number of initial strings (N_{R0}) that will be required to detect an intrusion as a function of the probability of detection ($1-P_r$), the number of segments of original strings being protected (N_s), and the matching rule (P_m)." See *Perelson*, column 6, lines 36-40. Consequently, *Perelson* fails to disclose, expressly or inherently, "generating, for each of the modified signature definitions, a revised inspector instance based on the modified signature definition and the corresponding generated inspector instance." Thus, the combination of *Vaidya* and *Perelson* fails to disclose, expressly or inherently, the limitations of Claim 2.

The above argument was previously presented in Applicants' Response dated November 8, 2006 at pages 10-11, and the Advisory Action mailed December 4, 2006 did not challenge the correctness of such arguments, but rather rejected Claim 2 without even

attempting justification.¹ Accordingly, Applicants contend that the rejection of Claim 2 is improper, as is the rejection of Claim 5 that depends therefrom.

With respect to Claim 13, the Final Office Action once again points to the equations at column 6, lines 6-24 of *Perelson* as disclosing “automatically generating, for each custom signature, executable code operable to detect intrusions associated with the custom signature based on the generated executable code of an associated default signature.” See Final Office Action, page 12. However, as discussed above with respect to Claim 2, and described in Applicants’ Response dated November 8, 2006 at pages 10-12, and also clearly stated by *Perelson* at column 5, lines 37-38, these formulas merely determine the “probability of a match” between the test string and the original string. Consequently, *Perelson* fails to disclose, expressly or inherently, “automatically **generating**, for each custom signature, executable **code operable to detect intrusions** associated with the custom signature based on the generated executable code of an associated default signature.” Thus, the combination of *Vaidya* and *Perelson* fails to disclose, expressly or inherently, the limitations of Claim 13.

The above argument was previously presented in Applicants’ Response dated November 8, 2006 at pages 10-12, and the Advisory Action did not challenge the correctness of such arguments, but rather rejected Claim 13 without even attempting justification.² Accordingly, Applicants contend that the rejection of Claim 13 is improper.

In the Final Office Action, Claims 19-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,960,170 issued to Eva Chen et al. (“*Chen*”) in view of U.S. Patent No. 6,725,377 issued to Kouznetsov (“*Kouznetsov*”). Applicants request a finding that these rejections are improper and allowance of these claims.

With respect to Claim 19, the Final Office Action contends that the combination of *Chen* and *Kouznetsov* discloses “receiving from the sensor data indicative of parameters and associated values for the signature to be modified.” Applicants contend that the combination of *Chen* and *Kouznetsov* does not disclose this limitation for the reasons described in Applicants’ Response dated November 8, 2006 at pages 12-13. In short, Applicants contend that the reliance of the Final Office Action, at page 18, on the passage at column 7, lines 39-67 of *Kouznetsov* as disclosing this limitation is incorrect. For example, this passage merely

¹ That the Examiner chose not to enter certain amendments to Claim 2 does not change the fact that the Claim is allowable in its independent form.

² That the Examiner chose not to enter certain amendments to Claim 13 does not change the fact that the Claim is allowable in its independent form.

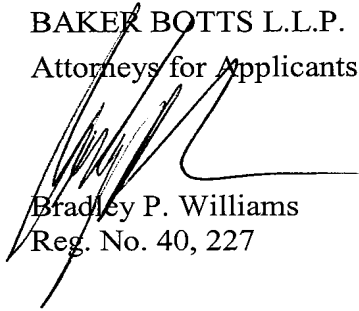
discloses the sending and receiving of identification information. Identification information for a server is not, however, data indicative of parameters and associative values for the signature to be modified.

The Advisory Action contends that “two items of data ha[ve] been used (see column 7, lines 53-58), therefore one [of] ordinary skill in the art could simply interprets [*sic*] theses [*sic*] two items of data as data indicative of parameters and associated values for [the] signature to be modified. However, contrary to this argument, *Kouznetsov* expressly identifies each of these two items as an IP address and a user ID (identification information). *See Kouznetsov*, column 7, lines 57-60. As a result, one of ordinary skill in the art could not simply interpret these two items of data as data indicative of parameters and associated values for the signature to be modified. Consequently, the combination of *Chen* and *Kouznetsov* fails to disclose the limitations of Claim 19. Accordingly, Applicants contend that the rejection of Claim 19 is improper, as are the rejections of Claims 20-27 that depend therefrom.

CONCLUSION

As the rejections of Claims 2, 5, 13, and 19-27 contain clear deficiencies, Applicants respectfully request a finding of allowance of Claims 2, 5, 13, and 19-27. To the extent necessary, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

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